

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GLORIA D. ROBINSON

Claimant

VS.

USD 475

Respondent

AND

KANSAS ASSOCIATION OF SCHOOL BOARDS

Insurance Fund

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Docket No. 1,024,552

ORDER

Respondent and its insurance fund appealed the May 18, 2006, preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

In the May 18, 2006, Order, Judge Benedict granted claimant temporary total disability benefits commencing January 30, 2006, until claimant was either certified as having reached maximum medical improvement or she was released to substantial and gainful employment.

Respondent and its insurance fund contend Judge Benedict erred. They argue claimant is substantially and gainfully employed and, therefore, she should not receive temporary total disability benefits. Accordingly, they request the Board to reverse the May 18, 2006, Order.

Conversely, claimant contends the issue that respondent and its insurance fund now raise is not one over which this Board may review in the appeal of a preliminary hearing order. Consequently, claimant requests the Board to dismiss this appeal.

The issues before the Board on this appeal are:

1. Does the Board have jurisdiction in the appeal of a preliminary hearing order to determine whether a worker satisfies the definition of being temporarily and totally disabled?

2. If so, is claimant entitled to receive temporary total disability benefits for the period in question?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and the parties' arguments, the Board concludes this appeal should be dismissed. In short, the issue raised by respondent and its insurance fund is not subject to review from a preliminary hearing order.

This is an appeal from a preliminary hearing order. As counsel know, the Board's jurisdiction to review preliminary hearing findings is limited. At this stage of the claim, not every alleged error is subject to review. In general, the Board can review preliminary hearing orders in which an administrative law judge has exceeded his or her jurisdiction.¹ Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

- (1) did the worker sustain an accidental injury,
- (2) did the injury arise out of and in the course of employment,
- (3) did the worker provide the employer with both timely notice and timely written claim, and
- (4) do certain other defenses apply.

The term "certain defenses" refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.²

The issue whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue specifically designated in K.S.A. 44-534a as being subject to review from a preliminary hearing order.

There is no question an administrative law judge has the jurisdiction at a preliminary hearing to determine if a worker's condition qualifies the individual to receive temporary total disability benefits.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a

¹ K.S.A. 2005 Supp. 44-551(b)(2)(A).

² *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

Consequently, the appeal should be dismissed.

As provided by the Act, preliminary hearing findings are not final but, instead, those findings may be modified upon a full hearing of the claim.⁴

WHEREFORE, the Board dismisses this appeal.

IT IS SO ORDERED.

Dated this ____ day of July, 2006.

BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and its Insurance Fund
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

⁴ K.S.A. 44-534a.